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RETROACTIVE LAWS AND THE FIFTH AMENDMENT. — Retroactive laws are not necessarily unconstitutional, since the constitutional prohibition against *ex post facto* laws is confined to criminal cases. *Calder* v. *Bull*, 3 Dall. 386. A retroactive law may be attacked as impairing the obligation of contracts. But as this clause of the constitution applies only to state legislation, *Mitchell* v. *Clark*, 110 U. S. 633, 643, Congress may pass a retroactive law as to civil cases, provided that the prohibition of the Fifth Amendment, that no person shall "be deprived of life, liberty, or property without due process of law," is not infringed. A recent case presents a very close question as to how far such an act of Congress may go. *Evans-Snider-Buell Co.* v. *McFadden*, 105 Fed. Rep. 293 (C. C. A., Eighth Cir.). A mortgage on cattle in Indian Territory had been executed by a non-resident, and recorded in the county where the cattle were. Finding the mortgage on record a creditor of the mortgagor attached the cattle, and got judgment against the mortgagor. By the laws of Indian Territory, which Congress had adopted from Arkansas, the mortgage, not being recorded where the mortgagor resided, was of no effect against subsequent incumbrancers even if they had notice. The mortgagee nevertheless intervened, and his claim was still before the courts, when Congress passed a statute validating all such mortgages "heretofore executed." The court held that this statute was constitutional as against this attaching creditor, and decided in favor of the mortgagee, although it was admitted that the mortgagee could not have prevailed under the law of Indian Territory as it previously existed.

This decision might be placed either on the ground that the attaching creditor who had judgment was not deprived of any property, or on the ground that there was "due process of law." As to the first ground, it has been held that an attaching creditor before judgment has property

rights in the articles attached. *Hannahs* v. *Felt*, 15 Iowa, 141. There is authority, however, *contra*. *Freiberg* v. *Singer*, 90 Wis. 608. But after an attaching creditor has got judgment he has virtually a mortgage given him by law; and it would appear, therefore, that he then has a legal property right in the attached goods. This seems to be presupposed in the decision that state exemption laws undertaking to cut off existing attachments after judgment are unconstitutional as impairing the obligation of contracts. *Gunn* v. *Barry*, 15 Wall. 610. But, although there was, therefore, a deprivation of property in a strict sense of the term, the principal case may well be supported on the second ground. "Due process of law" is an historic phrase equivalent to "the law of the land," and prevents only an arbitrary exercise of legislative power. *Bank of Columbia* v. *Okely*, 4 Wheat. 235, 244. See Cooley, Const. Lim. 6th ed. 431. Much may be done by a legislature to cure defects of form in past transactions in order to bring about equitable results. *Campbell* v. *Holt*, 115 U. S. 620; *Mechanics, etc. Savings Bank* v. *Allen*, 28 Conn. 97. Although the attaching creditor has a legal property right, yet it is difficult to say that it is arbitrary to prevent him from enforcing it against a mortgage of which he had notice. The argument of the court, "that there is no such thing as a vested right to do wrong," seems to amount to very much the same thing. *Foster* v. *Essex Bank*, 16 Mass. 245, 273. It may well be doubted whether this act of Congress would not be unconstitutional, as against an attaching creditor without notice of the mortgage. *Williamson* v. *N. J., etc. R. Co.*, 29 N. J. Eq. 311, 333 (*semble*). But since in the principal case there was such notice, the effect of the act here would seem not to have been arbitrary, and therefore not within the prohibition of the Fifth Amendment.

It should not be overlooked, however, that in order to reach a contrary result, it must also be maintained that Congress is constitutionally bound by the amendments in governing the territories. Nevertheless, since the case may be supported on other grounds, the court's failure to discuss the point seems appropriate, in view of the fact that at the time of the decision light on that question was soon to be expected from the Supreme Court of the United States.

EXTRADITION IN THE ABSENCE OF TREATIES. — Before extradition treaties were as common as at present, the question was important whether the President had power to extradite a criminal to a country with which there was no treaty. There has been but one case where the President exercised the power, and the action was so hastily completed that its legality was not brought before the courts. *Arguelle's Case*, Dana's Wheaton, § 115, note 73. To support the power of the President so to act, it seems necessary to adopt the view that since the United States is a sovereign nation, all powers usually belonging to sovereigns adhere to the federal government, unless by the constitution reserved to the states or to the people. This principle, however, is at least open to the objection that the federal government is not the sovereign of the United States, and that the delegation of a particular power or function to any department of the government is not lightly presumed. For "the government of the United States can claim no powers which are not granted to it by the constitution; and the powers actually granted must be such as are expressly given or given by necessary implication." Marshall, C. J., in *Martin* v. *Hunter's Lessee*, 1 Wheat. 304, 326.